

to be necessary, the undersigned further authorizes the Commissioner to charge the above-identified Deposit Account in the appropriate amount.

### **ELECTION**

The 7 December 2004 Office Action states that upon further consideration, it has been realized that a further restriction is required between the distinct inventions of:

- I. Group I, species I, Claims 1-11, 13-20, 22, 23, and 25-27, drawn to a packaged food product having a seal layer including a slip agent; and
- II. Group II, Claim 24, drawn to a packaged food product having a seal layer having two alternative seal energies.

In response to the restriction requirement, **Applicants hereby elect Group I (i.e., Claims 1-11, 13-20, 22, 23, and 25-27), without traverse.**

### **REMARKS**


Although Applicants elect Group I without traverse, Applicants note that in imposing the restriction requirement, the PTO is going on the record with the position that the claims of Group I are patentably distinct from the claim of Group II, i.e., that Group I and Group II are independent and patentably distinct relative to one another, i.e., *are patentable over one another*. This is a significant admission in that, for example, in combination with all other features recited in the independent claims, the PTO is taking the position that it would not have been obvious to use a slip agent (or a surfactant) in the seal layer if a prior art reference taught or suggested either or both of the two alternative seal energies recited in Claim 24, with this prior art not teaching or suggesting

the presence of a slip agent or surfactant in the seal layer, and/or vice versa. If the PTO does not want to be bound by these admissions, Applicants suggest that the restriction requirement be withdrawn. Otherwise, these admissions are open for use by Applicants during prosecution of the claims of both this application as well as any divisional applications filed on the patentably distinct invention of Claim 24.

### **CONCLUSION**

Applicants respectfully request entry of the election set forth above, as well as favorable consideration of the patentability of the elected claims, with a view towards allowance.

Respectfully Submitted,

  
Rupert B. Hurley Jr.  
Reg. No. 29,313  
Attorney for Applicants  
(864) 433-3247

6 January 2005